

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6996 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1-2 Yes 3 to 5 No

GN SHAH

Versus

VADODARA MUNICIPAL CORPORATION

Appearance:

MR IS SUPEHIA for Petitioner
MR PRANAV G DESAI for Respondent No. 1
NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 02/07/98

ORAL JUDGEMENT

A short question arises for consideration in this
Special Civil Application is as to:

"Whether the employees governed by B.C.S.R. is
entitled to H.R.A. and compensatory local
allowance during the period of suspension?

2. Necessary facts are that by order dated 28.9.1996

the petitioner was placed under suspension pending departmental enquiry on the charge that he had received a sum of Rs. 1000/- on 30.8.1996 and Rs. 820/- on 2.9.1996 towards recovery from the citizens but did not deposit the same on the same day and thus misappropriated the said amount temporarily. It is also stipulated in the order of suspension as condition No. 4 that the petitioner will not be entitled to get H.R.A. and compensatory local allowance after four months of the date of suspension. The said condition is under challenge in this Special Civil Application.

3. Mr. I.S. Supehia, learned counsel for the petitioner has referred to sub-rule (2) of Rule 151 of the B.C.S.R. and submitted that the petitioner is entitled to house rent allowance and compensatory allowance during the period of suspension. It is also submitted that the respondents have misconstrued the provisions of Rule 151 of B.C.S.R. and have illegally and arbitrarily incorporated condition No. 4 in the order of suspension. On the other hand Mr. P.G. Desai, learned advocate submits that as per Rule 151 a suspended employee is entitled to subsistence allowance which is equal to half average pay or half pay of leave salary. He has referred to Rule 338 and 339 and submitted that during half average pay leave the employee is entitled to compensatory local allowance for 120 days only. It is submitted that the interim relief is given only to those employees who are regular and expected to be availed of the benefit of next pay commission, so that the claim can be adjusted from the prospective pay. Further say of the respondents is that the suspended employee cannot be put at par with the regular employees and such H.R.A. and compensatory local allowance and interim relief are not payable to the suspended employee.

4. Chapter VIII of the B.C.S.R. deals with dismissal, removal and suspension. Rule 151 provides for entitlement of payment of government servant during the suspension period. The relevant parts of Rule 151 are extracted as follows:-

"151(1) A Government servant under suspension is entitled to the following payments:-

(ii) In the case of any other Government servant.

(a) A subsistence allowance at an amount equal to the leave salary which the Government servant would have drawn if he had been on leave on half average pay or on half pay and in addition

dearness allowance based on such leave salary.

Provided that where the period of suspension exceed (six) months the authority which made or is deemed to have made the order of suspension shall be competent to vary the amount of subsistence allowance for any period subsequent to the period of the first (six) months as follows:-

- (i) The amount of subsistence allowance may be increased by a suitable amount, not exceeding 50 per cent of the subsistence allowance admissible during the period of the first (six) months, if, in the opinion of the said authority the period of suspension has been prolonged for reasons to be recorded in writing, not directly attributable to the Government servant;
 - (ii) The amount of subsistence allowance may be reduced by a suitable amount not exceeding 50 per cent of the subsistence allowance admissible during the period of the first (six) months if in the opinion of the said authority the period of suspension has been prolonged due to reasons, to be recorded in writing directly attributable to the Government servant;
 - (iii) The rate of dearness allowance will be based on the increased or as, the case may be the decreased amount of subsistence allowance admissible under sub-clauses (i) and (ii) above.
- (b) Any other compensatory allowances admissible from time to time on the basis of pay of which the Government servant was in receipt on the date of suspension to such extent and subject to such conditions as the authority suspending the Government servant may direct;

Provided that the Government servant shall not be entitled to the compensatory allowances unless the said authority is satisfied that the Government servant continues to meet the expenditure for which they are granted."

(b) The following provisions apply to the recovery of dues from the subsistence allowance proper:

(i) Compulsory deductions: The following deductions should be enforced from the subsistence allowance, namely:-

(a) Income tax and Super tax (provided the employees' yearly income calculated with reference to subsistence allowance taxable)

(b) House rent and allied charges, i.e. electricity water, furniture etc;

(c) Repayment of loans and advances taken from Government as such rates as the Head of the department deems it right to fix;

(ii) Optional deductions - The following deduction shall not be made except with Government servants' written consent namely,:-

(a) Premia due on postal life insurance policies;

(b) Amounts due to co-operative stores and Co-operative Credit Societies;

(c) Refund of advances taken from General Provident Fund;

(iii) Other deductions - The deductions of the following nature shall not be made from the subsistence allowance, namely:-

(a) Subscription to a General Provident Fund

(b) Amounts due on Court attachments;

(c) Recovery of loss to Government for which Government Servant is responsible;

(d) Recoveries of over payments"

Clause (ii) of Sub-Rule (1) of Rule 151 of B.C.S.R. provides for entitlement of subsistence allowance to a government servant varying from time to time depending upon the period of suspension. Sub-clause (a) provides that government servant shall be entitled to subsistence allowance at an amount equal to the leave salary which the government servant would have drawn if he had been on leave on half average pay or on half pay. It clearly provides that the said payment of salary shall be in

addition to the dearness allowance based on such salary. Subsistence allowance can further be increased if the period of suspension is prolonged. Rule further provides that government servant shall also be entitled to dearness allowance based on the increased payment of subsistence allowance. Sub-clause (b) gives a discretion to the authority with respect to the payment of compensatory allowance. Proviso to the said sub-clause (b) provides that a government servant shall not be entitled to compensatory allowance unless the said authority is satisfied that the Government servant continues to meet the expenditure for which they are granted. Reading the said rule in the context of house rent allowance makes abundantly clear that a government servant is entitled to house rent provided he can satisfy the authority that he is using the house rent for the purpose it is given. The discretion vested with the authority has to be exercised in a rational manner. If the government servant satisfies that he has been utilising the house rent allowance the discretion cannot be exercised arbitrarily to deny him house rent. A further reference may be made to sub-clause (b) of sub-rule (2) of Rule 151 which provides that recovery of dues from the subsistence allowance.

"(b) The following provisions apply to the recovery of dues from the subsistence allowance proper:

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(a) Income tax and Super tax (provided the employees' yearly income calculated with reference to subsistence allowance taxable)

(b) House rent and allied charges, i.e. electricity water, furniture etc;

(c) Repayment of loans and advances taken from Government as such rates as the Head of the department deems it right to fix;

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following nature shall not be made from the
subsistence allowance, namely:-

(a) Subscription to a General Provident Fund

(b) Amounts due on Court attachments;

(c) Recovery of loss to Government for which
Government Servant is responsible;

(d) Recoveries of over payments

Note - 2 The compensatory local allowance and
house rent allowance sanctioned at the discretion
of the suspending authority under clause(b) of
this rule can be drawn only if the Government
servant under suspension certifies that he or his
family or both resided for the period for which
the allowance is claimed at the station where he
was on duty at the time of suspension.

Note - 3 Government servants continued under
suspension beyond the date of superannuation
should not be granted any compensatory allowance
including dearness allowance with effect from
that date."

Item No. (i) is with respect to compulsory deductions.
House rent allowance is one of the items regarding which
compulsory deductions can be made from the subsistence
allowance. It clearly shows that during the period of
suspension one retains government house and its rent has
to be compulsorily deducted from the subsistence
allowance. Thus even during suspension period an
employee continues to stay in government house and rent
is deducted from subsistence allowance. On the same
analogy an employee living in rented house cannot be
denied H.R.A. Otherwise it will be a case of
discrimination between employees under suspension staying
in Government House and employees under suspension living
in private rented house and receiving H.R.A. It must not
be lost sight of that suspension is not a punishment. A
suspended employee also required to feed himself and his
family and needs roof to stay. Thus, it is illogical to

consider the provisions of Rule 151 in a manner to deprive a government servant of house rent allowance during the period of suspension. Note appended to the Rule 151 makes it abundantly clear, when it says that compensatory local allowance and house rent allowance sanctioned at the discretion of the suspending authority under clause (b) can be drawn only if the government servant under suspension certifies that he or his family or both resided for the period for which the allowance is claimed at the station where he was on duty at the time of suspension. If the government servant is not entitled to H.R.A. or compensatory local allowance there was no occasion for the Government to give this clarification by appending this note that for compensatory local allowance and house rent allowance the government servant is required to satisfy that he has claimed the said allowance for the purpose for which the same are being paid. Rule 339 on which the respondents placed reliance makes the position further clear that when it is said that compensatory local allowance and H.R.A. should be drawn during leave by a government servant at the same time at which he was drawing the allowance immediately before proceeding on leave. Thus, a government servant even on leave is entitled to H.R.A. and C.L.A. Thus, the ineligibility of H.R.A. during leave period raised by the respondent is only misleading. The position is very simple that so long as he continues in service, may be under suspension or on leave is entitled to H.R.A. as well as C.L.A. This is the reason that under note 3 appended to Rule 151 a clarification is made that a government servant continues under suspension beyond the date of superannuation should not be granted any compensatory allowance including dearness allowance with effect from that date. It clearly shows that a person either on suspension or leave is entitled to HRA/CLA so long as he continues in serviced. Reference to Rule 338 is not only erroneous but also misleading. This rule deals with payment of salary during the period on leave. Even if this rule is read along with sub-clause (a) of sub-rule (1) of Rule 151, it does not support the contention of the learned counsel for the respondent.

5 In view of the aforesaid I hold that the government employee is entitled to HRA/CLA during the period of suspension till he attains the age of superannuation. Though certain discretion is vested with the authority but the payment of house rent allowance and CLA to government servant is mandatory if the condition provided under sub-clause (b) of Rule 151 is satisfied.

6 Another grievance voiced by the petitioner is

that his suspension has been prolonged for no valid reason. He was suspended as back as on 28.9.1996. Charge sheet was served as late as 25.2.1997 and the same has not yet been completed. He further submits that the petitioner has been put under suspension mala fide on most flimsy charges. It is also submitted that the respondent authority has failed to review the suspension of the petitioner periodically as required by the relevant rules. There appears to be substance in the contention of the petitioner. However I am not entering into the controversy for the present as the learned counsel for the Corporation informs that the enquiry is at the stage of conclusion.

7. In view of the aforesaid, this Special Civil Application is allowed. Condition No. 4 in the order of suspension dated 28.6.1994 which provides for non-payment of HRA/CLA after four months of suspension is quashed and set aside. It is not in dispute that the petitioner has given a certificate that he has been utilising HRA/CLA for the purpose it is given. Thus, the petitioner shall be paid withheld H.R.A. and C.L.A. with interest at the rate of 18% thereon and continue to pay during the period of suspension. The respondents shall complete the departmental enquiry by 17.8.1998. In case departmental enquiry is not completed by the said date it will be open for the respondent to approach this court for extension of time. It will also be open for the petitioner to approach this court for direction to revoke the order of suspension. Rule is made absolute. The respondents shall bear the cost of this Special Civil Application which is assessed at Rs. 1000/-.

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